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Attorneys for Defendant

AmerisourceBergen Corporation

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

UNITED STATES OF AMERICA, et al.,

Plaintiffs,

v.

EXPRESS SCRIPTS, INC., et al.,

Defendants.

Civil Action No. 05-CV-01714(DMC)(JAD)

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DECLARATION OF JOHN P. LAVELLE, JR., ESQ.

1. I am a partner with the law firm of Morgan, Lewis & Bockius LLP, attorneys for Defendant AmerisourceBergen Corporation (“ABC”) in the above-captioned matter. I submit this Declaration in support of ABC’s Motion to Dismiss the Third Amended Complaint For Lack of Subject Matter Jurisdiction Pursuant to Federal Rule of Civil Procedure 12(b)(1).

2. Attached hereto as Exhibit 1 is a true and correct copy of excerpts of the Class Action Complaint filed in *In re Pharmaceutical Industry Average Wholesale Price Litigation*, MDL No. 1456 (D. Mass. Dec. 19, 2001) (“AWP MDL”).¹

3. Attached hereto as Exhibit 2 is a true and correct copy of excerpts of the First Amended Class Action Complaint filed in the AWP MDL (Mar. 18, 2002).

4. Attached hereto as Exhibit 3 is a true and correct copy of excerpts of the Fourth Amended Master Consolidated Class Action Complaint filed in the AWP MDL (Mar. 1, 2006).

5. Attached hereto as Exhibit 4 is a true and correct copy of excerpts of the Class Action Complaint filed in *New England Carpenters Health Benefits Fund v. First DataBank, Inc.*, No. 05-11148 (D. Mass. June 2, 2005) (“*N.E. Carpenters*”).

6. Attached hereto as Exhibit 5 is a true and correct copy of excerpts of the Memorandum in Support of Defendant McKesson Corporation’s Motion to Dismiss the Complaint filed in *N.E. Carpenters* (Oct. 19, 2005).

7. Attached hereto as Exhibit 6 is a true and correct copy of the affidavit of Denny Lindell, dated March 1, 2006.

8. Attached hereto as Exhibit 7 is a true and correct copy of Plaintiffs’ Memorandum in Support of Motion for Leave to File First Amended Complaint filed in *N.E. Carpenters* (July 17, 2006).

9. Attached hereto as Exhibit 8 is a true and correct copy of excerpts of Plaintiffs’ Memorandum in Support of Class Certification filed in *N.E. Carpenters* (July 17, 2006).

¹ Due to the length of certain documents, only excerpts are included. Counsel will promptly provide a copy of the full documents to the Court upon request.

10. Attached as Exhibit 9 is a true and correct copy of the First Amended Complaint filed in *N.E. Carpenters* (July 21, 2006).

11. Attached hereto as Exhibit 10 is a true and correct copy of DEP'T OF HEALTH & HUMAN SERVS., OFFICE OF INSPECTOR GENERAL, VARIATION IN STATE MEDICAID DRUG PRICES (Sept. 2004).

12. Attached hereto as Exhibit 11 is a true and correct copy of DEP'T OF HEALTH & HUMAN SERVS., OFFICE OF INSPECTOR GENERAL, MEDICAID'S USE OF REVISED AVERAGE WHOLESALE PRICES (Sept. 2001).

13. Attached hereto as Exhibit 12 is a true and correct copy of Steve Bailey, *Profits v. People*, Boston Globe, Apr. 10, 2002, at C1.

14. Attached hereto as Exhibit 13 is a true and correct copy of Alice Dembner, *Medicare Waste Raises Cost of Drugs by \$1B*, Boston Globe, Sept. 21, 2001, at A1.

15. Attached hereto as Exhibit 14 is a true and correct copy of Bill Brubaker, *Firms in Talks on Overbilling for Medicare, Medicaid Drugs*, Washington Post, May 11, 2000, at E3.

16. Attached hereto as Exhibit 15 is a true and correct copy of Barbara Martinez, A "Survey" of One Company, Wall Street Journal, Oct. 6, 2006, at A1.

17. Attached hereto as Exhibit 16 is a true and correct copy of *First DataBank Agrees to Settle Price Fixing Suit*, Pharma Marketletter (Marketletter Publ'ns, Ltd.), Oct. 16, 2006.

18. Attached hereto as Exhibit 17 is a true and correct copy of Theresa Agovino, *Publisher Agrees to Stop Printing List of Drug Prices*, Memphis Commercial Appeal, Oct. 8, 2006, at D4.

19. Attached hereto as Exhibit 18 is a true and correct copy of Press Release, Prescription Access Litigation Project, *Settlement of Conspiracy Case Forces Major Restructuring of Prescription Drug Pricing System* (Oct. 6, 2006), available at <http://www.prescriptionaccess.org/press/pressreleases?id=0009>.

20. Attached hereto as Exhibit 19 is a true and correct copy of JoAnne Wojcik, *Drug Pricing System Nixed by Pact*, 40 Bus. Ins. 1 (Oct. 16, 2006).

21. Attached hereto as Exhibit 20 is a true and correct copy of *Drug Price Publisher Will Stop Practice in Settlement*, St. Louis Post-Dispatch, Oct. 7, 2006, at A33.

22. Attached hereto as Exhibit 21 is a true and correct copy of *Managed Care Pharmacists to Review Payment Methods*, Inside CMS (Inside Washington Publishers), Nov. 2, 2006.

23. Attached hereto as Exhibit 22 is a true and correct copy of *Class-Action Suit Against Drug Giants May Accelerate AWP Demise*, Inside CMS (Inside Washington Publishers), Nov. 16, 2006.

24. Attached hereto as Exhibit 23 is a true and correct copy of Liz Kowalczyk, *Lawsuit Targets 28 Drug Makers*, Boston Globe, Dec. 21, 2001, at C1.

25. Attached hereto as Exhibit 24 is a true and correct copy of Press Release, *McKesson Corporation Statement Regarding First DataBank Settlement* (Oct. 6, 2006), available at http://www.mckesson.com/en_us/McKesson.com/About%2BUs/Newsroom/Press%2BReleases%2BArchives/2006/McKesson%2BCorporation%2BStatement%2BRegarding%2BFirst%2BDataBank%2BSettlement.html.

26. Attached hereto as Exhibit 25 is a true and correct copy of *House Committee Probes Medicaid Fraud*, Drugs.com (June 26, 2003), <http://www.drugs.com/news/house-committee-probes-medicaid-fraud-contacts-26-companies-3-wholesalers-3332.html>.

27. Attached hereto as Exhibit 26 is a true and correct copy of excerpts of DEP'T OF HEALTH & HUMAN SERVS., PROGRAM MEMORANDUM: AN ADDITIONAL SOURCE OF AVERAGE WHOLESALE PRICE DATA IN PRICING DRUGS AND BIOLOGICALS COVERED BY THE MEDICARE PROGRAM, PM REV. AB-00-86 (Sept. 8, 2000), *available at* <http://www.irpsys.com/refinfo%5Chcfapm%5CAB-00-86.htm>.

28. Attached hereto as Exhibit 27 is a true and correct copy of excerpts of the complaint filed in Nevada, *State v. Abbott Laboratories, Inc.*, No. CV02-00280 (Nev. Dist. Ct. Washoe Cnty. Jan. 17, 2002).

29. Attached hereto as Exhibit 28 is a true and correct copy of excerpts of the complaint filed in Montana, *State ex rel. McGrath v. Abbott Laboratories, Inc.*, No. DV-2002-4155 (Mont. Dist. Ct., Lewis and Clark Cnty. Feb. 25, 2002).

30. Attached hereto as Exhibit 29 is a true and correct copy of excerpts of the complaint filed in Minnesota in *State v. Pharmacia Corp.*, No. 02-9660 (Minn. Dist. Ct. Hennepin Cnty. June 18, 2002).

31. Attached hereto as Exhibit 30 is a true and correct copy of excerpts of the complaint filed in New York in *New York ex rel. Spitzer v. Pharmacia Corp.*, No. 904-03 (N.Y. Sup. Ct. Albany Cnty. Feb. 13, 2003).

32. Attached hereto as Exhibit 31 is a true and correct copy of excerpts of the complaint filed in Pennsylvania in *Commonwealth ex rel. Pappert v. TAP Pharmaceutical Products, Inc.*, No. 212-MD-2004 (Pa. Cmwlth. Ct. Mar. 10, 2004).

33. Attached hereto as Exhibit 32 is a true and correct copy of excerpts of the complaint filed in Wisconsin in *State v. Abbott Laboratories*, No. 04-1709 (Wis. Cir. Ct. Dane Cnty. June 3, 2004).

34. Attached hereto as Exhibit 33 is a true and correct copy of excerpts of the complaint filed in Kentucky, *Commonwealth ex rel. Stumbo v. Alpharma, Inc.*, No. 04-CI-1487 (Ky. Cir. Ct., Franklin Cnty. Nov. 4, 2004).

35. Attached hereto as Exhibit 34 is a true and correct copy of excerpts of the complaint filed in Alabama in *State v. Abbott Laboratories, Inc.*, No. CV-05-219 (Ala. Cir. Ct. Mont. Cnty. Jan. 26, 2005).

36. Attached hereto as Exhibit 35 is a true and correct copy of excerpts of the complaint filed in Illinois, *State v. Abbott Laboratories, Inc.*, No. 05CH02474 (Ill. Cir. Ct. Cook Cnty. Feb. 7, 2005).

37. Attached hereto as Exhibit 36 is a true and correct copy of excerpts of the complaint filed in Ohio, *State v. Dey, Inc.*, No. A0402047 (Ohio Ct. Com. Pl., Hamilton Cnty. Mar. 9, 2005).

38. Attached hereto as Exhibit 37 is a true and correct copy of excerpts of excerpts of the complaint filed by the New York counties in *City of New York v. Abbott Laboratories, Inc.*, MDL No. 1456 (D. Mass. June 22, 2005).

39. Attached hereto as Exhibit 38 is a true and correct copy of excerpts of the complaint filed in Mississippi in *State v. Abbott Laboratories, Inc.*, No. C2005-2021 (Miss. Ch. Ct. Hinds Cnty. Oct. 20, 2005).

40. Attached hereto as Exhibit 39 is a true and correct copy of excerpts of the complaint filed in Hawaii, *State v. Abbott Laboratories, Inc.*, No. 06-1-0720-04 EEH (Haw. Cir. Ct. 1st Apr. 27, 2006).

41. Attached hereto as Exhibit 40 is a true and correct copy of the letter from United States Representative W.J. “Billy” Tauzin to ABC, dated June 26, 2003.

42. Attached hereto as Exhibit 41 is a true and correct copy of Deborah Caulfield Rybak, *Drugmaker Sued: Attorney General Mike Hatch Says Government Insurers are Being Charged Huge Markups on Drugs*, Star Tribune, June 19, 2002, at 1D.

Pursuant to 28 U.S.C. § 1746(2), I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 16, 2013.

By: /s John P. Lavelle, Jr.
John P. Lavelle, Jr., Esq.